TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 138.

JAMES J. RAFFERTY, COLLECTOR OF INTERNAL REVENUE FOR THE PHILIPPINE ISLANDS, PETITIONER,

vs.

SMITH, BELL & COMPANY, LIMITED.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1920.

CERTIORARI AND RETURN FILED MARCH 9, 1921.

(27,901)

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1 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands, (Appellate Jurisdiction).

G. R. No. 14466.

SMITH, BELL & COMPANY, LIMITED, Plaintiff and Appellant,

versus

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Concerning Amount of Money.

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case, to wit:
On February 7, 1918, the plaintiff by its attorneys filed with the office of the Clerk of the Court of First Instance of Manila, Ninth Judicial District, the following complaint:

2 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

(Case No. 15842.)

SMITH, BELL & COMPANY, LIMITED, Plaintiff,

versus

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant.

Complaint.

Comes now plaintiff, and, for its cause of action against defendant, alleges:

I.

That plaintiff is a corporation duly organized and existing under the laws of the Philippine Islands and domiciled in the City of Manila; that defendant is the duly appointed and acting Collector of Internal Revenue for the Philippine Islands;

II.

That, during the period from October 1, 1916, to December 31, 1916, plaintiff sold and exported, from the Philippine Islands to various persons and firms without the Philippine Islands,
3 merchandise, the produce of the Philippine Islands, of the value of four Million Eight Hundred and Fifty-three Thousand Two Hundred and Thirty-six Pesos (₱4,853,236.00);

III.

That defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of section 1614 of Act No. 2657 of the Philippine Legislature, demanded of plaintiff a tax of one per centum (1%) of the value of the said merchandise, to wit, the sum of Forty-eight Thousand Five Hundred and Thirty-two Pesos and Thirty-six Centavos (₱48,532.36);

IV.

The plaintiff involuntarily, and to avoid the exaction of penalties for non-payment, on the 18th day of January, 1917, paid to defendant the sum of Forty-eight Thousand Five Hundred and Thirty-two Pesos and Thirty-six Centavos (₱48,532.36) demanded by him, under written protest on the ground that the said tax was a tax on exports from the Philippine Islands the levy or collection of which was prohibited by the provisions of the Act of Congress of August 29, 1916, known as the Jones Law, and at the same time notified the defendant that, if the said sum paid under protest were not returned, suit would be brought for its recovery;

4 V.

That defendant refused, and still refuses, to return to plaintiff the said sum of Forty-eight Thousand Five Hundred and Thirty-two Pesos and Thirty-six Centavos (₱48,532.36).

For a second cause of action against defendant, plaintiff:

I.

Adopts the allegations contained in the first paragraph of its first cause of action, and further alleges:

II.

That, during the period from January 1, 1917, to March 31, 1917, plaintiff sold and exported, from the Philippine Islands to various persons and firms without the Philippine Islands, merchandise, the produce of the Philippine Islands, of the value of Five Million Eight

Hundred and Eighty-four Thousand Four Hundred and Thirty-eight Pesos (₱5,884,438.00);

III.

That defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of section 1614 of Act No. 2657 of the Philippine Legislature, demanded of plaintiff a tax of one per centum (1%) of the value of the said merchandise, to wit, the sum of Fifty-eight Thou-
5 sand Eight Hundred and Forty-four Pesos and Thirty-eight Centavos (₱58,844.38);

IV.

That plaintiff involuntarily, and to avoid the exaction of penalties for non-payment, on the 19th day of April, 1917, paid to defendant the sum of Fifty-eight Thousand Eight Hundred and Forty-four Pesos and Thirty-eight Centavos (₱58,844.38) demanded by him, under written protest on the ground that the said tax was a tax on exports from the Philippine Islands the levy or collection of which was prohibited by the provisions of the Act of Congress of August 29, 1916, known as the Jones Law, and at the same time notified the defendant that, if the said sum paid under protest, were not returned, suit would be brought for its recovery;

V.

That defendant refused, and still refuses, to return to plaintiff the said sum of Fifty-eight Thousand Eight Hundred and Forty-four Pesos and Thirty-eight Centavos (₱58,844.38).

For a third cause of action against defendant, plaintiff:

I.

Adopts the allegations contained in the first paragraph of its first cause of action, and further alleges:

6 II.

That, during the period from the 1st day of April, 1917, to the 30th day of June, 1917, plaintiff sold and exported, from the Philippine Islands to various persons and firms without the Philippine Islands, merchandise, the produce of the Philippine Islands, of the value of Nine Million Four Hundred and Six Thousand Seven Hundred and Fifty Pesos (₱9,406,750.00);

III.

That defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of sec-

tion 1614 of Act No. 2657 of the Philippine Legislature, demanded of plaintiff a tax of one per centum (1%) of the value of the said merchandise, to wit, the sum of Ninety-Four Thousand and Sixty-seven Pesos and Fifty Centavos. (₱94,067.50);

IV.

That plaintiff involuntarily, and to avoid the exaction of penalties for non-payment, on the 19th day of July, 1917, paid to defendant the sum of Ninety-four Thousand and Sixty-seven Pesos and Fifty Centavos (₱94,067.50) demanded by him, under written protest on the ground that the said tax was a tax on exports from the Philippine Islands the levy or collection of which was prohibited by the provisions of the Act of Congress of August 29, 1916, known
7 as the Jones Law, and at the same time notified defendant that, if the said sum paid under protest were not returned, suit would be brought for its recovery;

V.

That defendant refused, and still refuses, to return to plaintiff the said sum of Ninety-four Thousand and Sixty-seven Pesos and Fifty Centavos (₱94,067.50).

For a fourth cause of action against defendant, plaintiff:

I.

Adopts the allegations contained in the first paragraph of its first cause of action, and further alleges:

II.

That, during the period from the first day of July, 1917, to the 30th day of September, 1917, plaintiff sold and exported from the Philippine Islands to various persons and firms without the Philippine Islands, merchandise, the produce of the Philippine Islands, of the value of Ten Million Five Hundred and Twenty-seven Thousand Two Hundred and Nineteen Pesos (₱10,527,219.00);

III.

That defendant, in his capacity as Collector of Internal
8 Revenue for the Philippine Islands, and under the pretended authority of section 1614 of Act No. 2657 of the Philippine Legislature, demanded of plaintiff a tax of one per centum (1%) of the value of the said merchandise, to wit, the sum of One Hundred and Five Thousand Two Hundred and Seventy-two Pesos and Nineteen Centavos (₱105,272.19);

IV.

That plaintiff involuntarily, and to avoid the payment of penalties for non-payment, on the 19th day of October, 1917, paid to the defendant the sum of One Hundred and Five Thousand Two Hundred and Seventy-two Pesos and Nineteen Centavos (₱105,272.19) demanded by him under written protest on the ground that the said tax was a tax on exports from the Philippine Islands the levy or collection of which was prohibited by the provisions of the Act of Congress of August 29, 1916, known as the Jones Law, and at the same time notified defendant that, if the said sum paid under protest were not returned, suit would be brought for its recovery;

V.

That defendant refused, and still refuses, to return to plaintiff the said sum of One Hundred and Five Thousand Two Hundred and Seventy-two Pesos and Nineteen Centavos (₱105,272.19).

9 For a fifth cause of action against defendant, plaintiff:

I.

Adopts the allegations contained in the first paragraph of its first cause of action, and further alleges:

II.

That, during the period from the first day of October, 1917, to the 31st day of December, 1917, plaintiff sold and exported, from the Phillipine Islands to various persons and firms without the Philippine Islands, merchandise, the produce of the Philippine Islands, of the value of Ten Million Six Hundred and Forty-six Thousand Three Hundred and Sixty-two Pesos (₱10,646,362.00);

III.

The defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of section 1459 of Act No. 2711 of the Philippine Legislature, demanded of plaintiff a tax of one per centum (1%) of the value of the said merchandise, to wit, the sum of One Hundred and Six Thousand Four Hundred and Sixty-three Pesos and Sixty-two Centavos (₱106,463.62);

IV.

10 That plaintiff involuntarily, and to avoid the payment of penalties for non-payment, on the 18th day of January, 1918, paid to defendant the sum of One Hundred and Six Thousand Four Hundred and Sixty-three Pesos and Sixty-two Centavos (₱106-463,62) demanded by him, under written protest on the ground that

the said tax was a tax on exports from the Philippine Islands the levy or collection of which was prohibited by the provisions of the Act of Congress of August 29, 1916, known as the Jones Law, and at the same time notified defendant that, if the said sum paid under protest were not returned, suit would be brought for its recovery;

V.

That defendant refused, and still refuses, to return to plaintiff the said sum of One Hundred and Six Thousand Four Hundred and Sixty-three Pesos and Sixty-two Centavos (₱106,463.62).

Wherefore plaintiff prays that it have judgment against defendant for the sum of Four Hundred and Thirteen Thousand One Hundred and Eighty Pesos and Five Centavos (₱413,180.05), with interest and costs of this suit.

Manila, P. I., February 7, 1918.

LAWRENCE & ROSS,
(Sgd.) By J. G. LAWRENCE,
Attorneys for Plaintiff.

11 On February 27, 1918, the Solicitor-General for the Philippine Islands entered his appearance in the case as attorney for the defendant.

Thereafter, on March 21, 1918, the defendant, by his attorney the Solicitor-General, filed a demurrer to the complaint based on the ground that it did not state facts sufficient to constitute a cause of action against the defendant which demurrer was answered by the plaintiff, through its attorneys, on March 22 of the same year.

On May 4, 1918, the Honorable James A. Ostrand, Judge of the Court of First Instance of Manila, issued an order overruling the said demurrer to the complaint filed by the defendant to which order the defendant, on May 7, 1918, presented an exception which reads as follows:

(Heading and Title Omitted.)

Now comes the Solicitor-General as attorney for the defendant in the above-entitled case, and respectfully excepts to the order of the Court overruling the demurrer to the plaintiff's complaint.

Manila, May 6th, 1918.

QUINTIN PAREDES,
Solicitor-General.

Thereafter, on May 8, 1918, the said Solicitor-General, on behalf of the defendant, filed an answer to the complaint which reads as follows:

12 (Heading and Title Omitted.)

Answer.

Comes now the defendant in the above entitled cause, by his attorney the undersigned the Solicitor-General for the Philippine Islands, and, reserving the objection that the complaint does not state a cause of action, admits that the allegations of the said complaint are true.

Manila, P. I., May 8, 1918.

QUINTIN PAREDES,
Solicitor-General,
Attorney for the Defendant.

On July 25, 1918, the Honorable James A. Ostrand, Judge of the Court of First Instance of Manila, Ninth Judicial District, entered judgment and decision in the case which reads as follows:

13 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

(Case No. 15,842.)

SMITH, BELL & COMPANY, LIMITED, Plaintiff,

versus

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant.

Decision.

This action has been brought by Smith, Bell & Co., Ltd., a corporation, to recover from the defendant, James J. Rafferty, the sum of ₱413,180.05, collected from the plaintiff by the defendant, in his capacity as Collector of Internal Revenue, as a percentage tax on sales made by the plaintiff to vendees without the Philippine Islands.

The plaintiff corporation, during the period from October 1, 1916, to December 31, 1917, sold and exported from the Philippine Islands, to various persons and firms without the Philippine Islands, merchandise of the value of ₱41,318,005.00. The defendant, as Collector of Internal Revenue for the Philippine Islands, de-
14 manded of plaintiff a tax of one per centum of the amount of the sales, basing his demand upon the provisions of section 1614 of Act 2657 (the Administrative Code of 1916) and section 1459 of Act 2711 (the Administrative Code of 1917). The plaintiff corporation paid the tax demanded, amounting to ₱413,180.05, under written protest on the ground that it was a tax upon exports from the Philippine Islands the levy or collection of which was

prohibited by the provisions of section 11 of the Act of Congress of August 29, 1916, known as the "Jones Law." Defendant denied the protest and refused to return the tax paid. Plaintiff sues for the recovery of the tax, with interest and costs, setting up five causes of action corresponding to the five quarters for which the tax was paid. Defendant, by answer, admits that the allegations of the complaint are true, but denies that the complaint states a cause of action.

Section 1614 of Act 2657, which was reenacted as section 1459 of Act 2711, provides:

"All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based upon the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, or whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold."

Section 11 of the Jones Law provides:

"That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government, and provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, etc."

There being no dispute as to the facts, the only question to be determined is whether or not a tax imposed, under the above quoted sections of the Administrative Codes of 1916 and 1917, on merchandise sold and exported from the Philippine Islands to various persons and firms without the Philippine Islands, is a duty on exports the levy or collection of which is prohibited by the quoted section of the Jones Law.

In the case of Macleod & Co., Inc. vs. The Collector of Internal Revenue, R. G. No. 7444 (unreported), the Supreme Court of the Philippine Islands held that a tax on a sale of hemp made in Manila to the Manila agent of certain cordage companies located in the United States, and delivered to the vendee on board a vessel for shipment to the United States, was in effect and result a tax on exports.

In the recent case of Crew Levick Co. vs. Pennsylvania (United States Advance Opinions 1917, page 122), it appeared that the State of Pennsylvania had levied a tax of one-half mill on each dollar of the gross annual business of wholesale dealers in goods, wares, and merchandise. The Supreme Court of the United States without dissent, held that, in so far as this tax affected sales abroad, it was a tax on exports, and unconstitutional.

The two cited cases are compelling upon this court. The tax in question is a duty on exports, and was unlawfully levied and collected. However, Congress, by the Urgent Deficiency Appropriation Act of June 4, 1918, has ratified and confirmed the collection of taxes imposed by Act No. 2711 (Administrative Code of 1917). Plaintiff may, therefore, recover only such taxes as were levied and collected under the provisions of Act No. 2657 (Administrative Code of 1916), which are admitted to amount to the sum of ₱306,716.43.

Let judgment be entered for plaintiff in the sum of ₱306,-
17 716.43. No interest or costs will be allowed.

It is so ordered.

JAMES A. OSTRAND,
Judge.

The parties having been notified of the foregoing decision, the plaintiff, by its attorneys, on July 29, 1918, presented an exception and, at the same time, gave notice of its intention to prepare and file a bill of exceptions for the review of the case by the Supreme Court. Said exception and notice reads as follows:

(Heading and Title Omitted.)

Exception and Notice.

Now comes the plaintiff in the above-entitled cause, by its undersigned attorneys, and excepts to the decision of this court rendered on the 25th day of July, 1918, and announces its intention of perfecting a bill of exceptions for the review of the said cause by the Supreme Court.

Manila, P. I., July 27, 1918.

LAWRENCE & ROSS,
(Sgd.) By J. G. LAWRENCE,
Attorneys for Plaintiff.

On the same date, to wit, July 29, 1918, the Attorney-General, on behalf of the defendant, filed the following exception and
18 motion for new trial:

(Heading and Title Omitted.)

Exception and Motion for New Trial.

Now comes the defendant in the above-entitled cause and respectfully excepts to the decision of this court, dated the 25th day of July, 1918, to so much of said decision and judgment as declares that the amounts paid by the plaintiff as taxes on goods sold and exported from the Philippine Islands during the periods in which Act No. 2567 was in force, have been illegally collected, and to so much thereof as orders the return of the sum of ₱306,716.43 to the plain-

tiff; and moves this honorable court to set aside the judgment rendered herein and grant a new trial of said action for the following reasons:

1. The evidence presented is insufficient to justify the decision.

2. That the decision is contrary to the law.

Manila, P. I., July 29, 1918.

QUINTÍN PAREDES,
Attorney-General.

Thereafter, on August 10, 1918, the foregoing motion for a new trial was denied by the court; to the order denying the said
19 motion for new trial the defendant, on August 17 of the same year, excepted forthwith and gave notice of his intention to file a bill of exceptions for the review of the case by the Supreme Court, as follows:

(Heading and Title Omitted.)

Exception.

On this 16th day of August, 1918, the undersigned has received notice of the order of this court of August 10, 1918, by which defendant's motion for a new trial was denied. The defendant enters his exception to said order of the court and at the same time notifies the court of his intention to present a bill of exception in order that the Supreme Court may revise the judgment entered in this cause.

Manila, August 16, 1918.

QUINTÍN PAREDES,
Attorney-General.

On August 6 and August 21, 1918, and within the time limited by law, both plaintiff and defendant by their respective attorneys filed with the Court of First Instance their respective bill of exceptions praying that the same be approved and certified, and forwarded th-reafter to the Clerk of the Supreme Court of the Philippine Islands, together with all evidence given at the hearing of the case, which said evidence is thereby incorporated by reference into
20 said bill of exceptions, so that the error complained of may be considered by the Supreme Court.

On August 10 and August 31, 1918, the Court of First Instance approved, signed, and certified the respective bill of exceptions presented by the parties, and the same, on September 10, 1918, were transmitted to the office of the Clerk of the Supreme Court of the Philippine Islands, together with the record of the case, for the purposes of the appeal.

On September 12, 1918, the case was duly docketed, on appeal, bearing No. 14466 of the General Register of the Supreme Court.

Thereafter, on September 19, 1918, the bill of exceptions tendered by the plaintiff was printed and filed.

On October 3, 1918, the plaintiff and appellant, through its attorneys, filed its brief in the case assigning the following errors:

Assignment of Errors.

I. That the trial court failed to give judgment for plaintiff for the recovery of the taxes collected by the defendant for the period from October 1, 1917, to December 31, 1917.

II. That the trial court failed to give judgment for plaintiff for interest and costs.

On October 18, 1918, the bill of exceptions tendered by the defendant was printed and filed.

21 On December 18, 1918, the plaintiff and appellant, through its Attorneys, filed in the case its brief as appellee.

On January 8, 1919, the Attorney-General, on behalf of the defendant and appellant, filed also his brief in the case assigning the following errors.

Assignment of Errors.

1. The trial court erred in holding that the taxes collected under section 1614 of Act 2657 from October 1, 1916, to September 30, 1917, have been ratified, confirmed and validated by the Act of Congress of June 4, 1918.

2. The trial court erred in ordering the refund of such taxes to plaintiff.

On January 25, 1919, the case was finally submitted to the Supreme Court for decision on the merits.

Thereafter, on January 26, 1920, the Supreme Court of the Philippine Islands rendered its decision in the case, which said decision is in the words and figures following, to wit:

22 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

In Banc.

G. R. No. 14466.

Promulgated January 26, 1920.

Submitted January 25, 1919.

Justices present: The Chief Justice, Cayetano S. Arellano, and Messrs. Florentino Torres, E. Finley Johnson, Manuel Araullo, Thos. A. Street, Geo. A. Malcolm, and Ramón Avanceña.

SMITH, BELL & COMPANY, LIMITED, Plaintiff and Appellant,

versus

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Decision.

JOHNSON, *J.*:

The only question presented by this appeal is, was the tax levied and collected by the defendant from the plaintiff upon certain merchandise, the produce of the Philippine Islands, which had been sold and exported from the Philippine Islands to various
23 persons and firms without the Philippine Islands during the period from October 1, 1916, to December 31, 1917, legally levied and collected?

There is no dispute about the facts. They are admitted, and may be stated as follows:

That the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, collected of the plaintiff, under protest, a 1% tax on merchandise, the produce of the Philippine Islands, which the latter had sold and exported from the Philippine Islands to various persons and firms without the Philippine Islands. The total amount of such taxes is the sum of ₱413,180.05. The different periods covered by said collections were:

(*a*) From October 1, 1916, to December 31, 1916;

(*b*) From January 1, 1917, to March 31, 1917;

(*c*) From April 1, 1917, to June 30, 1917;

(*d*) From July 1, 1917, to September 30, 1917;

(*e*) From October 1, 1917, to December 31, 1917.

Said five periods constitute, for the purposes of this decision, but two: namely, (1) from October 1, 1916, to September 30, 1917, and (2) from October 1, 1917, to December 31, 1917.

The collections for the periods (*a*), (*b*), (*c*), and (*d*) (or the first period) above were made under the provisions of section 1614
24 of Act No. 2657, while that for the period (*e*) (or the second period) was made under the provisions of section 1459 of Act No. 2711.

Upon a consideration of the above facts and the law, the Hon. James A. Ostrand, Judge, rendered a judgment, the dispositive part of which is as follows:

"The tax in question is a duty on exports, and was unlawfully levied and collected. However, Congress, by the Urgent Deficiency Appropriation Act of June 4, 1918, has ratified and confirmed the collection of taxes imposed by Act No. 2711 (Administrative Code of 1917). Plaintiff may, therefore, recover only such taxes as were

levied and collected under the provisions of Act No. 2657 (Administrative Code of 1916), which are admitted to amount — the sum of ₱306,716.43.

A judgment was rendered for said amount, without the allowance of interest and costs.

From that judgment both the plaintiff and defendant appealed. The plaintiff-appellant alleges that the lower court committed an error (*a*) in not allowing the recovery of the taxes collected by the defendant for the period from October 1, 1917, to December 31, 1917 (or the second period); and (*b*) in not giving a judgment in favor of the plaintiff for interest and costs. The defendant-appel-
25 lant alleges that the lower court committed an error in not holding that the taxes collected under section 1614 of Act No. 2657, covering the period from October 1, 1916, to September 30, 1917, for the reason that section 1614 of said Act (2657) had been ratified, confirmed and validated by the Act of Congress of June 4, 1918.

Said section 1614 of Act No. 2657 provides among other things the following:

"Sec. 1614. Percentage Tax on Merchants' Sales.—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, *or consigned abroad* by them, such tax to be based on the actual selling price or value at which the things in question are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands."

Said quoted provisions of section 1614 is an amendment of former Acts (section 40 of Act No. 2339, section 2 of Act No. 2541, and section 3 of Act No. 2622). The important part of the said
26 amendment, involved in the present case, is found in the parts italicized in the above quotation. Said section (1614) became effective July 1, 1916.

Said section 1614 of Act No. 2657 was amended by section 1459 of Act No. 2711, which became effective on the first day of October, 1917. Act No. 2711 (section 1459) expressly repealed section 1614 of Act No. 2657. The amendment of section 1459 of Act No. 2711 made no important changes in section 1614 of Act No. 2657.

The plaintiff-appellant contended in the court below that all taxes collected under section 1614 of Act No. 2657 and section 1459 of Act No. 2711 were illegally collected, upon the theory that said tax was a tax upon exports which is expressly prohibited by section 11 of the Jones Law (Act of Congress of August 29, 1916, Vol. 12, Public Laws, p. 237). The lower court sustained the contention of the plaintiff except as to the taxes collected under section 1459 of Act No. 2711 (October 1st to December 31st, 1917) for the

reason that Congress had expressly ratified the provision of said section notwithstanding the said provisions of the Jones Law.

With the contention of the plaintiff we fully agree not only because of the provisions of section 11 of the Jones Law but
27 as well for the reasons given by the Supreme Court of the United States in the case of Crew Levick Company vs. Commonwealth of Pennsylvania (245 U. S., 292; 256 Pa. St., 508) as well as the decision of this Court in the case of Macleod & Co. vs. Collector of Internal Revenue (R. G. No. 7444). In the case of Crew Levick Co. vs. Pennsylvania, the Supreme Court of the United States said:

"The bare question, then, is whether a state tax imposed upon the business of selling goods in foreign commerce, in so far as it is measured by the gross receipts from merchandise shipped to foreign countries, is in effect a regulation of foreign commerce or an impost upon exports, within the meaning of the pertinent clauses of the Federal Constitution. Although dual in form, the question may be treated as a single one, since it is obvious that, for the purposes of this case, an impost upon exports and a regulation of foreign commerce may be regarded as interchangeable terms. And there is no suggestion that the tax is limited to the necessities of inspection, or that the consent of Congress has been given. We are constrained to hold that the answer must be in the affirmative."

The doctrine announced in that decision is in conformity not only with the commerce clause of the Constitution of the
28 United States (Par. 2, Sec. 10, Art. I, Const. of the U. S.) but with many other decisions of the Supreme Court of the United States.

Patapsco Guano Co. vs. North Carolina Board of Agriculture, 171 U. S. 345, 350;
Brown vs. Maryland, 12 Wheat. 419;
Nathan vs. Louisiana, 9 How. (U. S.) 73;
Cook vs. Pennsylvania, 97 U. S. 566;
Pittaburg, etc., Ce. vs. Louisiana, 156 U. S. 590;
Trade-Mark Cases, 100 U. S. 82;
Almy vs. California, 12 How. 169;
McCulloch vs. Maryland, 4 Wheat. 316.

The right to regulate inter-state commerce is expressly reserved to the Congress of the United States by the Constitution. The Congress exercised the right reserved to it by section 11 of the Jones Law.

Section 1614 of Act No. 2657 which provided for an export tax was in force in the Philippine Islands during the period from October 1, 1916, until September 30, 1917. An export tax is expressly prohibited by article 11 of the Jones Law. The Jones Law was in force during that period (October 1, 1916, to September 30, 1917). Considering the provisions of the Jones Law, we must conclude that the collections for that period (October 1, 1916, to Sep-

tember 30, 1917), which amounted to ₱306,716.43, were illegal and must be returned as ordered by the lower court.

29 The question whether or not the collections made by the defendant during the period from October 1, 1917, to December 31, 1917, were legal, presents some difficulties not presented in relation to the period of October 1, 1916, to September 30, 1917. Section 1611 of Act No. 2657 was amended by section 1459 of Act No. 2711. Act No. 2711 was adopted by the Philippine Legislature on the 10th day of March, 1917, but did not become effective until October 1, 1917. At the time said section (1459) became effective (October 1, 1917) the provision, prohibiting an export tax, of the Jones Law was still in force, and in the absence of other conditions the taxes collected for that period (from October 1, 1917, to December 31, 1917) would be equally illegal with the taxes collected under the provisions of section 1614 of Act No. 2657 (from October 1, 1916, to September 30, 1917). We find, however, that section 1459 of Act No. 2711 was expressly ratified by an Act of Congress of June 4, 1918, in the language following: "The taxes imposed by the Philippine Legislature in section 1459 of the Act numbered 2711, enacted by that body on March 10, 1917, are hereby legalized and ratified, and the collections of all such taxes heretofore or hereafter, legalized, ratified and confirmed hereby as fully to all intents and purposes as if the same by prior act

30 of Congress specifically had been aut-orized and directed."

Said Act (June 4, 1918) being an Act of Congress—the same authority which adopted the Jones Law—must be taken and accepted as an amendment or a repeal of the Jones Law so far as the latter affected said section 1459. We must conclude, therefore, that the authority for the collections of the taxes under section 1459 of Act No. 2711 having been fully ratified and confirmed by the Congress of the United States, that said collections were made in accordance with law. Congress is possessed with full authority to ratify subject perhaps to certain Constitutional limitation, the Acts of the Philippine Legislature (U. S. vs. Heenszen & Co., 206 U. S., 307).

The defendant-appellant contends that the Act of Congress of June 4, 1918, had the effect of ratifying section 1614 of Act No. 2657. There might be some merit in that contention if Congress had ratified or recognized the authority of the Philippine Legislature to impose an export tax. Upon the contrary, however, we find (*a*) that Congress, in section 11 of the Jones Law, expressly deprived the legislature of such power and (*b*) by said Act of June 4, 1918, ratified only the particular Act (2711) by mentioning the particular section in question. The ratification can only be held to be a ratification of the law mentioned in it. If Congress

31 had intended to ratify the general power in the Philippine Legislature and that specific Act, it would have so stated and would not have ratified and legalized a specific section of a specific law. The ratification cannot be held to go beyond its terms.

Our conclusions are:

1. That the tax of 1% imposed by the Philippine Legislature upon merchandise, the produce of the Philippine Islands, which is sold and exported from the Philippine Islands to various persons and firms without the Philippine Islands, is an export tax;

2. That an export tax in the Philippine Islands is expressly prohibited by section 11 of the Jones Law;

3. That said section 11 of the Jones Law was in force and effect in the Philippine Islands from the 29th day of August, 1916, until the 30th day of September, 1917, thereby covering the entire period (October 1, 1916, to September 30, 1917) during which the taxes were collected under the provisions of section 1614 of Act No. 2657;

4. That while the tax provided for and collected under section 1459 of Act No. 2711 during the period of October 1, 1917, to December 31, 1917, were expressly prohibited by the Jones Law, yet nevertheless, by reason of the express ratification of said section (1459) by the Act of Congress of June 4, 1918, said collections were ratified, legalized and confirmed;

5. That the taxes collected for the period of October 1, 1916, to September 30, 1917, being illegally collected, the plaintiff is entitled to a judgment for the return of the same, together with interest at 6% on the following amounts from the following dates until paid:

(*a*) On ₱48,532.36, from the 18th day of January, 1917;

(*b*) On ₱58,844.38, from the 19th day of April, 1917;

(*c*) On ₱94,067.50, from the 19th day of July, 1917, and

(*d*) On ₱105,272.19, from the 19th day of October, 1917.

H. E. Heacock Co. vs. Insular Collector of Customs, 37 Phi., 97;
Hongkong & Shanghai Banking Corporation vs. Rafferty, 16 Off. Gaz., 1970;
Erskine vs. Van Arsdaley, 15 Wall., 68;
National Home vs. Parrish, 229 U. S., 496;
Section 144 of the Internal Revenue Act of 1914;
Article 1108, Civil Code.

6. With reference to the costs, section 487 of Act No. 190 provides that: "Costs shall ordinarily be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided as may be equitable." We have, as a matter of practice, always imposed costs upon the appellant who has failed in this Court to obtain a reversal or a modification of the judgment of the lower court. There seems to be no good reason in the present case for changing or modifying that rule.

Therefore, and for the foregoing reasons, the judgment of the

lower court is hereby affirmed, with interest and costs as above indicated.

Ten days after notice of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

Arellano, Ch. J., and Torres and Araullo, JJ., concur.

MALCOLM, *J.*, concurring in part and dissenting in part, with whom Street and Avanceña, JJ., concur:

I agree with so much of the decision as relates to the main question. I disagree with so much thereof as relates to the minor question of costs. My reasons follow:

In the United States the rule is well established, that unless expressly authorized by statute, a judgment for costs either in a civil or criminal case cannot be rendered against the United States or a state. The question was early presented to the United States Supreme Court and Mr. Chief Justice Marshall dismissed it in
34 a decision which reads as follows: "The United States never pay costs." (U. S. vs. Barker, 1817, 2 Wheat. (U. S.) 395.) In the Antelope, 1827, 12 Wheat. (U. S.) 546, the court held that: "It is a general rule, that no court can make a direct judgment or decree against the United States, for costs and expenses, in a suit to which the United States is party, either on behalf of any suitor, or any officer of the government." (See to the same effect, U. S. vs. Ringgold, 1834, 8 Pet. (U. S.) 150; U. S. vs. McLemore, 1846, 4 How. (U. S.) 286; U. S. vs. Boyd, 1847, 5 How. (U. S.) 29; Stanley vs. Schwalby, 1895, 162 U. S. 255; U. S. vs. Verdier, 1896, 164 U. S. 213; Pine River Logging, etc., Co. vs. U. S., 1901, 186 U. S. 279; Marine vs. Lyon, 1894, 62 Fed. Rep. 153, 10 C. C. A. 315; Nabb's Case, 1 Ct. Cl. 173; Henry's Motion, 15 Ct. Cl. 162; U. S. vs. Warren, 1903, 12 Okla. 350, 71 Pac. Rep. 685.) Likewise, a state is not liable for court costs in the absence of an express statute creating such liability. (Greer County vs. Watson, 1898, 7 Okla. 174; Collier vs. Powell, 1853, 23 Ala. 579; People vs. Pierce, 1844, 6 Ill. 553; Turner vs. Com., 1859, 2 Met. (Ky.) 619; Com. vs. Todd, 1873, 9 Bush (Ky.) 708; State vs. Taylor, 1881, 33 La. Ann. 1270; Townsend's Succession, 1888, 40 La. Ann. 66, 3 So. Rep. 488; State vs. Greenwell, 1832, 4 Gill & J. (Md.) 407;
35 State vs. Williams, 1905, 101 Md. 529, 4 Ann. Cas. 970; State vs. Kinne, 41 N. H. 238; State vs. Harrington, 1802, 2 Tyler (Vt.) 44; State vs. Bradford Sav. Bank, etc., Co., 1898, 71 Vt. 234, 44 Atl. Rep. 349; Beachy vs. Lamkin, 1866, 1 Idaho 50; Stone vs. Falconer, (Ky. 1900) 54 S. W. Rep. 712; Prince vs. State, 1846, 7 Hump. (Tenn.) 137; State vs. Montgomery, 1883, 74 Ala. 226; People vs. Madison County, 23 Ill. App. 386, affirmed 125 Ill. 334, 17 N. E. Rep. 802; State vs. Waggner, 1890, 42 La. Ann. 54, 8 So. Rep. 209; State vs. Watson, (Tenn. Ch. 1896) 39 S. W. Rep. 536; State vs. Bradford, 1859, 32 Vt. 50; Stephens vs.

State, 1872, 47 Ala. 696; State vs. Brewer, 1877, 59 Ala. 130; Dawson vs. Matthews, 1894, 105 Ala. 485, 17 So. Rep. 19; Moore vs. People, 37 Ill. App. 641; State vs. Wormick, 1878, 1 Lea (Tenn.) 559; Morgan vs. Pickard, 1887, 86 Tenn. 208, 9 S. W. Rep. 690; Noyes vs. State, 1879, 46 Wis. 250, 1 N. W. Rep. 1; Boykin vs. People, 1896, 23 Colo. 183, 46 Pac. Rep. 635; District of Columbia vs. Lyon, 7 Mackey (D. C.) 222; Kitchell vs. Madison County, 1843, 5 Ill. 163; Rawley vs. Vigo County, 1830, 2 Blackf. (Ind.) 355; Miami County vs. Blaka, 1863, 21 Ind. 32.) As emphasizing the general rule, special statutes creating a liability on the part of the state for court costs in civil cases have been passed in certain states. If there is added to the foregoing the further prin-
36 ciple that an official who is sued by a private individual is not liable personally for costs, the absoluteness of the rule which in effect is a subsidiary proviso of the main proposition, making the government immune from suit, is demonstrated. (Hammond vs. The People, 1863, 32 Ill. 446.)

In the Philippines, the question of costs against the Government appears to have been first raised directly in the case of The Hongkong, Shanghai Banking Corporation vs. Rafferty, (1918, 16 O. G. 1970.) In an action instituted by the Hongkong, Shanghai Banking Corporation against James J. Rafferty, as Collector of Internal Revenue of the Philippine Islands, the recovery of certain taxes was asked by the plaintiff. In resolving the assignment of error of the plaintiff-appellant, the subject of costs against the Government was fully considered and it was held without dissent that no costs should be allowed against the Government of the Philippine Islands, in cases in which the Government of the Philippine Islands or a nominal representative of the Government is the unsuccessful party. It is this rule, predicated as it is on the jurisprudence of the United States and England, which should here again be applied, and should continue to be applied until the Philippine Legislature shall see fit by special statute to make the Government liable for costs.

37 Judgment should be affirmed, with interest since this action was instituted and accrued before the Administrative Code of 1917 went into effect, but without costs in either instance.

On January 27, 1920, the parties were duly notified of the foregoing decision, and, on February 6 of the same year, the Attorney-General, on behalf of the defendant and appellant, filed the following motion for reconsideration:

(Heading and Title Omitted.)

Motion for Reconsideration.

Now comes the Attorney-General on behalf of the defendant in the above-entitled case and moves for a reconsideration of the decision rendered by this Court on January 26, 1920, in so far as the same holds that:

1. The tax of one per centum imposed by the Philippine Legislature on the gross value in money of the commodities, goods, wares and merchandise sold, bartered, exchanged, or consigned abroad, is a tax on exports;

2. The collection of said tax during the period of time from October 1, 1916, to September 30, 1917, was illegal, and further that the same was not legalized and ratified by the Law of Congress of June 4, 1918, and that, therefore said amounts collected
38 should be returned to the plaintiff;

3. The defendant should pay interest on the amounts aforementioned;

4. The defendant should pay the costs of the action.

Argument.

I.

It is our contention that the present tax of one per cent is not a tax on exports but it is, as the law designates it, a percentage tax on merchant's sales. As stated by an eminent writer, "to come within the definition of an export tax, it has been held that the tax must be levied upon the right to export, or upon goods because of the fact that they are being exported or are intended to be exported. The fact that certain goods are intended for export does not, however, exempt them from an ordinary property tax, for, as said, the tax is one on exports only when its incidence or amount is determined by the fact that the goods are intended for export. This is the doctrine laid down in Coe vs. Errol with reference to taxation by the States and in Turpin vs. Burgess with reference to federal taxation." (1 Willoughby on The Constitution, p. 611.) Section 1611 of Act 2657 and section 1459 of Act 2711 clearly impose the tax on sales, exchanges and consignments, and the fact that
39 some of those goods may be exported cannot give to the general tax the standing of an export tax, for the reason that the exportation is merely *in* incidental and does not form the basis or the main consideration for the tax. Consequently, it does not come within the prohibition clause of the Jones Law in section 11 thereof.

Furthermore, assuming that there is a doubt as to whether the present tax is a tax on exports or a percentage tax on sales, the doubt should be resolved in such a manner as to hold the law valid. It is an elementary principle of statutory construction that where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other it would be valid, the courts should adopt the construction which would uphold it. (6 R. C. L., p. 78.) Accordingly, in case of any doubt, the tax may and should properly be considered as a percentage tax on sales.

II.

But even granting for the sake of argument that collection of the tax during the period intervening between October 1, 1916 and September 30, 1917 was illegal, we hold that the same is included in the ratification by Congress, embodied in its Act of June 4, 1918.

40 The present decision (on page 4) holds that Act 2711 (section 1459) expressly repealed section 1614 of Act 2657. We beg to differ from said holding. Act 2711 not only did not repeal Act 2657 (see list of repealed statutes in last section of Act 2711), but merely amended the same (see preamble of Act 2711) and what is more, section 1459 of Act 2711 incorporating as it does section 1614 of Act 2657 and containing its exact provisions, must be held to be a continuation of the latter. (See section 3, Act 2711.) Being a mere amendment and a continuation of Act 2657, it should consequently be given a retrospective effect.

Where a statute, or a portion thereof, is amended by declaring that, as amended, it shall read as follows, and therein setting forth the amended section in full, the provisions of the original statute that are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions are to be understood as enacted at the time the amended act takes effect. (36 Cyc. 1223, and authorities therein cited.)

It is evident from the authority above quoted that, if section 1459 of Act 2711 is to be considered the law on the subject since the enactment of section 1614 of Act 2657, then the ratification

41 measure of Congress above referred to must necessarily be held to cover the period from the date of the promulgation of Act 2657; consequently, it must be held to have also ratified and legalized the collection of taxes from October 1, 1916, to September 30, 1917.

III.

Assuming for a moment that the defendant should return to the plaintiff the sums which the decision has held to be illegally collected and not ratified, we submit that interest thereon should not be paid. The defendant here is but a nominal representative of the Government and the latter is the real party in interest and is the one responsible for the consequences and for the satisfaction of any money liability which may be adjudged against the defendant. In support of our contention we need but refer to the decision of this court wherein this point has clearly and explicity been decided. In the case of Marine Trading Co. vs. The Government of the Philippine Islands (R. G. No. 14443), this Court has said:

"It is the undoubted law that the State (in this jurisdiction, the Government of the Philippine Islands) never pays interest unless it expressly engages to do so. This is especially true in case the claim is an unliquidated one. Among other authorities, we find

42 Angarica vs. Bayard, 1887, 127 U. S., 251, in which Mr. Justice Blatchford said:

"'The case, therefore, falls within the well-settled principle, that the United States are not liable to pay interest on claims against them, in the absence of express statutory provision to that effect. It has been established, as a general rule, in the practice of the Government, that interest is not allowed on claims against it, whether such claims originate in contract or intort, and whether they arise in the ordinary business of administration or under private acts of relief, passed by Congress on special application. The only recognized exceptions are, where the Government stipulates to pay interest and where interest is given expressly by an act of Congress, either by the name of interest or by that of damages.'"

In the case of Sarasola vs. Trinidad, 17 Official Gazette, p. 1874, this Court held that:

"It is well-settled both on principle and authority that interest is not to be awarded against a sovereign government, as the United States or State, unless its consent has been manifested by an Act of its Legislature or by a lawfull contract of its executive officers. If there be doubt upon the subject that doubt must be resolved in favor of the State. In Gosman's Case (1881), L. R. 17 Ch. Div., 771), Sir George Jessel, Master of the Rolls, speaking for
43 the Court of Appeals, summed up the Law of England in this concise statement: 'There is no ground for charging the Crown with interest. Interest is only payable by statute or by contract.' In Attorney-General vs. Cape Fear Navigation Co. (1843, 37 N. C., 444), Chief Justice Ruffin laid down as undoubted law that 'the State never pays interest unless she expressly engages to do so.' Judge Cooley says that 'The recovery (in tax suits) must be limited to the money received. * * * Interest is recoverable only when expressly allowed by statute.' (2 Cooley on Taxation, 3d Ed., p. 1510; Savings and Loan Society vs. San Francisco (1901, 131 Cal., 356). In United States vs. Sherman (1868, 98 U. S., 465), the court, in considering a law relating to suits against revenue officers providing for recovery of the amount payable out of the treasury, held that the amount recoverable did not include interest upon the judgment. Justice Strong, delivering the opinion of the court, in part said:

"When the obligation arises, it is an obligation to pay the amount recovered; that is, the amount for which judgment has been given. The act of Congress says not a word about interest. Judgments, it is true, are by the law of South Carolina, as well as by Federal legis-
44 lation, declared to bear interest. Such legislation, however, has no application to the government. And the interest is not part of the amount recovered. It accrues only after the recovery has been had. Moreover, whenever interest is allowed either by statute or by common law, except in cases where there has been a contract to pay interest, it is allowed for delay or default of the debtor. But delay or default cannot be attributed to the gov-

ernment. It is presumed to be always ready to pay what it owes. (See also U. S. vs. Bayard (1888), 127 U. S., 251; U. S. vs. North Carolina (1890), 136 U. S., 211; Board of County Commissioners vs. Kaul (1908), 17 L. R. A. (N. S.), 552.)

"As this is the main rule, the converse proposition must be equally true, that taxes only draw interest as do sums of money when expressly authorized. A corollary to the principle is also self-evident, that interest cannot be recovered on an abatement unless the statute provides for it. (1 Cooley on Taxation, 3d Ed., p. 20; 2 Cooley on Taxation, 3d Ed., p. 1392; City of Lowell vs. County Commissioners of Middlesex (1862), 3 Allen (Mass.), 550.) The only contrary dictum is to the effect that where an illegal tax has been collected, the citizen who has paid and is obliged to bring suit against the collector is entitled to interest from the time of the illegal exaction. (Erskine vs. Van Arsdale (1872), 15 Wall., 75; National Home vs. Parrish (1913), 229 U. S., 494; Matter of O'Berry
45 (1904), 179 N. Y., 285.) The distinction undoubtedly arises through the fiction that the suit is against the collector and not against the State, although the judgment is not to be paid by the collector but directly from the treasury.

"It has been urged that since interest is in the nature of damages, it is proper for allowance. While this may be true in the general run of cases it is not to be necessarily true when the sovereign power is concerned. The state is not amenable to judgments for damages or costs without its consent. (Hongkong and Shanghai Banking Corporation vs. Rafferty (1918), 16 Off. Gaz., 1970, citing numerous decisions.)

* * * * * * *

"Our statute, it will be remembered, not only does not authorize interest but negatives the payment of interest. While, therefore, coming under the purview of the general principle pertaining to legislative discretion, it also avoids any trouble to be found in those decisions which allow interest without any express provision on the subject, because the statute provides that interest shall not be allowed. * * *

* * * * * * *

"Applying these well-known principles to the case at bar, it would seem that the legislature has considered that a law providing
46 for the payment of a tax with a right to bring a suit before a tribunal to recover back the same without interest is a full and adequate remedy for the aggrieved taxpayer. The disallowance of interest in such case like the other steps prescribed as conditional to recovery, has been made one of the conditions which the lawmakers have seen fit to attach to the remedy provided. * * *."

We understand that there are a few decisions among which is Erskine vs. Van Arsdale, 15 Wall., 75, holding that interest is in some cases recoverable from representatives of the Government, but

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said cases are decidedly in the minority and do not carry the preponderance of authority. Moreover, these same cases have already been considered by this Court and the Case of Sarasola vs. Trinidad above referred to and, nevertheless, the contrary doctrine which we are invoking has been upheld.

It is a well established principle that the state may not be sued without its consent, and if it does consent to be sued, it can impose such conditions and restrictions as it may see fit. The Philippine Legislature by section 1679 saw fit to limit the liability of the Government in cases like the present, to the payment of the amount of any tax illegally collected, without interest. This provision of law is clear, and unless it is held to be invalid, then, any interpretation or reconstruction thereof by which the Government or any of its nominal representatives may be made to pay interest on any sums illegally collected would clearly run counter to the manifest intention of the Legislature.

47

IV.

As to the payment of costs, we can do no better than to refer to the opinion concurring and in part dissenting written by Mr. Justice Malcolm in the present case and the numerous authorities cited therein, to support our contention that the defendant has been erroneously ordered to pay the costs, assuming that the amount of taxes should be returned to the plaintiff. It may further be added that the doctrine enunciated in the case of Hongkong & Shanghai Banking Corporation vs. Rafferty, (16 Off. Gaz., 1970), that interests and costs may not be allowed against the Government, was again laid down and ratified in the case of Sarasola vs. Trinidad, 17 Off. Gaz., 1874.

Conclusion.

In view of the foregoing observations, it is respectfully submitted that the tax in question is not an export tax but rather a percentage tax on sales, and, therefore, does not contravene the provisions of section 11 of the Jones Law; that even granting that the said tax is an export tax, the collection during the period between October 1, 1916 and September 30, 1917 was ratified and validated by Congress thru its Act of June 4, 1918; that, assuming for a moment that the plaintiff is legally entitled to the amounts held to have been illegally collected from him, still, said sums did not draw interest and that, consequently, no interest should be allowed against the Government or its nominal representative the defendant herein; that the defendant representing the Government may not be ordered to pay costs.

48

Wherefore, the undersigned respectfully prays that the foregoing motion for reconsideration be granted.

QUINTÍN PAREDES,
Attorney-General.

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The foregoing motion for reconsideration was denied by the Supreme Court in its session of March 11, 1920.

Thereafter, on March 15, 1920, the Clerk of the Supreme Court of the Philippine Islands entered the final judgment in the case which reads as follows:

49 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

(G. R. No. 14466.—March 15, 1920.)

SMITH, BELL & COMPANY, LIMITED, Plaintiff and Appellant,

versus

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the twenty-sixth day of January, A. D. nineteen hundred and twenty;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the twenty-fifth day of July, nineteen hundred and eighteen, and from which the above-entitled appeal was taken, be, and the same is hereby,

50 affirmed, with interest.

[SEAL.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified correct:

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Thereafter, on March 18, 1920, the Attorney-General, on behalf of the defendant and appellant, filed the following petition:

(Heading and Title Omitted.)

Comes now the Attorney-General on behalf of the defendant and appellant and excepts to the decision of this court in denying his motion for a rehearing in the above-entitled action, and also excepts to the final judgment entered herein.

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Notice is hereby given that the defendant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and said defendant hereby makes application for the retention of the record in said case in this court pending the preparation, printing and certification of said record and the presentation of said petition to the Su-
51 preme Court of the United States. The said defendant also prays for a stay of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States.

Manila, March 16, 1920.

QUINTÍN PAREDES,
Attorney-General, Attorney for Defendant and Appellant.

And finally, on March 19, 1920, the Supreme Court, upon considering the above petition filed by the Attorney-General, on behalf of the defendant and appellant, passed a resolution ordering that the record of the case be retained in the office of the Clerk of said Supreme Court for a period of six months.

52 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing fifty-one (51) printed pages contain a true and correct translation and transcript of the record of the case entitled Smith, Bell & Company, Limited, Plaintiff and Appellant, versus James J. Rafferty, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant, concerning amount of money, bearing No. 14466 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 26th day of July, A. D. nineteen hundred and twenty.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

53 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, in obedience to the writ of certiorari issued by the Supreme Court of

SE IN CENTER

the United States, dated the 18th day of November, 1920, in Cause No. 544 entitled James J. Rafferty, Collector of Internal Revenue for the Philippine Islands, vs. Smith, Bell & Company, Limited, do hereby make return thereof to said Court, in accordance with the terms of the stipulation filed in said cause by the attorneys of record of the respective parties, the original of which stipulation is hereto attached, this eighteenth day of January in the year of our Lord one thousand nine hundred and twenty-one.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

54 In the Supreme Court of the United States, October Term, 1920.

No. 544.

SMITH, BELL & COMPANY, LIMITED, Plaintiff and Appellant,

v.

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Stipulation that Return May Consist of Copy of Record on File.

It is hereby stipulated that the certified copy of the record of this case on application by defendant above named for writ of certiorari, certified July 26, 1920, by the Clerk of the Supreme Court of the Philippine Islands (the case being No. 14,666 in that court), which has been filed in the office of the Clerk of the Supreme Court of the United States, may be taken and deemed the return required by the writ of certiorari granted in the cause by the Supreme Court of the United States under date of November 18, 1920.

Dated Washington, D. C., November 22, 1920.

CLARENCE B. MILLER,
Attorney for Plaintiff-Appellee.
CHARLES MARVIN,
Attorney for Defendant-Appellant.

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55 In the Supreme Court of the United States, October Term, 1920.

No. 544.

SMITH, BELL & COMPANY, LIMITED, Plaintiff and Appellant,

v.

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Stipulation that Return May Consist of Copy of Record on File.

It is hereby stipulated that the certified copy of the record of this case on application by defendant above named for writ of certiorari, certified July 26, 1920, by the Clerk of the Supreme Court of the Philippine Islands (the case being No. 14,666 in that court), which has been filed in the office of the Clerk of the Supreme Court of the United States, may be taken and deemed the return required by the writ of certiorari granted in the cause by the Supreme Court of the United States under date of November 18, 1920.

Dated Washington, D. C., November 22, 1920.

CLARENCE B. MILLER,
Attorney for Plaintiff-Appellee.
CHARLES MARVIN,
Attorney for Defendant-Appellant.

56 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the Philippine Islands, Greeting:

Being informed that there is now pending before you a suit in which Smith, Bell & Company, Limited, is plaintiff and appellant, and James J. Rafferty, Collector of Internal Revenue for the Philippine Islands, is defendant and appellant, which suit was removed into the said Supreme Court by virtue of appeals from the Court of First Instance of Manila, Ninth Judicial District, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby com-
57 mand you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

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Witness the Honorable Edward D. White, Chief Justice of the United States, the eighteenth day of November, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

58 [Endorsed:] File No. 27,901. Supreme Court of the United States, October Term, 1920. No. 544. James J. Rafferty, Collector of Internal Revenue for the Philippine Islands, vs. Smith, Bell & Company, Limited. Writ of certiorari. —r Bureau, War Department, Nov. 26, 1920. 27262/75-F.

59 [Endorsed:] File No. 27,901. Supreme Court U. S., October Term, 1920. Term No. 544. James J. Rafferty, Collector etc., petitioner, vs. Smith, Bell & Company, Ltd. Writ of certiorari and return. Filed March 9, 1921.